IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.27233 of 2007

GEETA DEVI, WIFE OF LATE SHAMBHU MISHRA, RESIDING NEAR PRESIDENT CHAMBER, BEER CHAND PATEL PATH, G.P.O., P.S. KOTWALI, DISTRICT-PATNA, BUT IN THE COMPLAINT PETITION WRONG ADDRESSS HAS BEEN GIVEN BY THE COMPLAINANT AS RESIDENT OF VILLAGE SHOKHARA, KALAMBAGH, P.S. PHYLWARIA, DISTRICT-BEGUSARAI……PETITIONER.

Versus

1. **THE STATE OF BIHAR.**
2. **RANI DEVI, WIFE OF GUDDU TIWARI, RESIDENT OF VILLAGE-SOKHARA, KALAMBAGH, P.S. PHULWARIA, DISTRICT-BEGUSARAI.**

…….....OPPOSITE PARTIES.

For the Petitioner : M/s. Ajay Kumar Thakur and Dudhnath Singh and Ms. Babita Kumari, Advocates.
For the State : Mr. Jharkhandi Upadhaya, A.P.P.
For O.P. No.2 : None.

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O R D E R

The petitioner who alongwith another has been arrayed as accused in Complaint Case No.2264(C) of 2006, through this application , has prayed for the quashing of the order dated 9.3.2007 passed therein by Smt. Anjana Kumari Lal, Judicial Magistrate, First Class, Begusarai, whereby she has issued process against both the accused, including the petitioner, for facing trial for offences under Sections 498A and 494 I.P.C. and the consequential order dated 21.3.2007 passed by the Sessions Judge, Begusarai, whereby he has dismissed Cr. Revision No.59 of 2007 preferred by the petitioner against order dated 9.3.2007.

Briefly stated, the prosecution case as culled out from the

complaint petition filed by one Rani Devi, impleaded herein as O.P. No.2, is that her marriage with one Guddu Tiwari was solemnized in May, 1999 and at the time of bidai sufficient gifts commensurate with the paying capacity was bestowed upon her. The first few days at the matrimonial home was spent in normalcy but soon thereafter he husband started taunting her over bringing insufficient articles in dowry and demanded of her to ask her brother to furnish Rs. one lakh and a motor cycle failing which she would have to face troubled times. The complainant is said to have narrated the demand to her brother on her return to the parental home one month later. Six months thereafter the complainant returned to her matrimonial home after her brother had placated with the husband. The first few days again were spent in normalcy but thereafter the husband started to return home in drunken condition and tortured her, both physically and mentally, in reiterating the demands which she bore out as her father was advanced in age and not in condition to fulfill the demand. The husband also kept threatening her that he would contact another marriage if the demands were not fulfilled and her torture increased after she gave birth to a baby girl. Eventually in July 2002 during her life time and her marriage surviving, the husband allegedly contacted a second marriage with the present petitioner and brought her home and both of them started torturing and assaulting her in various ways. Once they also attempted to administer poison to her but she was saved as she did not eat the food. Finally, on the

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night of 22.11.2006, both the accused assaulted her, confiscated all her belongings and ousted her from the matrimonial home.

It has been submitted on behalf of the petitioner that it would be apparent from a plain reading of the complaint petition that the demand for dowry was being made by the husband of the complainant, Guddu Tiwari and not by the petitioner herein and for not fulfilling the same it was Guddu Tiwary who had resorted to assaulting and torturing her and that it was Guddu Tiwari who had allegedly married the present petitioner and thereafter both of them had assaulted the complainant and had also tried to administer poison to her. While denying the allegations attributed to her, it was sought to be submitted that Guddu Tiwari had filed a matrimonial suit against the complainant under Section 9 of the Hindu Marriage Act being Matrimonial Case No.102 of 2006 before the learned Principal Judge, Family Court, Begusarai. The fact of the petitioner herein being the wife of Guddu Tiwari has also been denied and she claims to be the legally wedded wife of one Late Shambhu Mishra and claims to have no concern whatsoever with Guddu Tiwari. In this connection, it was pointed out that in her application for anticipatory bail she had taken similar grounds and on the basis thereof she had been granted anticipatory bail. It has also been submitted that the offence under Section 494 I.P.C. cannot be attributed to her since there had been no marriage with Guddu Tiwari.

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Admittedly, the instant case is one based on a complaint

petition filed by O.P. No.2. The law is well settled that since the object of an inquiry under Section 202 Cr.P.C. is to ascertain whether the allegations made in the complaint are intrinsically true the Magistrate acting under Section 203 has to satisfy himself that there is sufficient ground for proceeding. In order to come to this conclusion he is entitled to consider the evidence taken by him or recorded by him in an inquiry under Section 202 Cr.P.C. and he is not entitled to rely upon any material besides this. Gainful reference may be placed on the decision of Chandradeo Vs. Prokash Chandra (AIR 1963 SC 1430).

In the instant case from the evidence that was collected by the learned Magistrate at the inquiry under Section 202 Cr.P.C. in his opinion a case under Section 498A and 494 I.P.C. appeared to have been made out against both the accused including the petitioner. It appears that the evidence at the inquiry has been led to the effect that the petitioner herein is the second wife of Guddu without Guddu having obtained a divorce against the present complainant.

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So far as the question of the petitioner herein living at Patna and having no concern with Guddu is concerned, these are matters of facts and have to be established by leading evidence. Similarly, the issue of Guddu having filed a matrimonial case for restitution of conjugal life is also a matter which has to be proved by cogent evidence and at this stage this Court in exercise of powers under Section 482 Cr.P.C. cannot look into these matters

which are matters to be raised and proved by evidence at the trial.

Due regard being had to the facts and the circumstances of the case, I find no merit in this application which is accordingly dismissed.

(Abhijit Sinha,J)

Patna High Court, Patna.
Dated: The 19th of November, 2008.
Pradeep Srivastava/A.F.R.

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